

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ADIDAS AMERICA, INC., and  
ADIDAS AG,

Plaintiffs,

-v-

THOM BROWNE, INC.,

Defendant.

21-cv-5615 (JSR)

ORDER

JED S. RAKOFF, U.S.D.J.

In connection with the motion for a new trial of Adidas of America, Inc. and Adidas AG (collectively, "Adidas") (Dkt. 220), the parties are hereby directed to file supplemental briefing on the following questions:

1. Can even an innocent failure to produce documents during discovery constitute "misconduct" within the meaning Federal Rule of Civil Procedure 60(b)(3), or must the moving party demonstrate some greater degree of culpability, such as negligence, gross negligence, or recklessness?
2. In light of the additional discovery that the parties have received, why were the four emails that form the basis of Adidas's motion not produced during discovery, to what degree was Thom Browne (or its counsel) culpable for the failure to

produce the emails and does that degree of culpability satisfy the aforementioned "misconduct" standard under Rule 60(b)(3)?

This supplemental briefing will be simultaneous. Each party may submit an opening supplemental brief, not to exceed 15 double-spaced pages, addressing these two questions by no later than 6 PM (EST) on March 13, 2024. Each party may submit a reply, not to exceed 7 double-spaced pages, by no later 6 PM (EST) on March 20, 2024.

SO ORDERED.

Dated: New York, NY  
February 28, 2024

  
JED S. RAKOFF, U.S.D.J.